



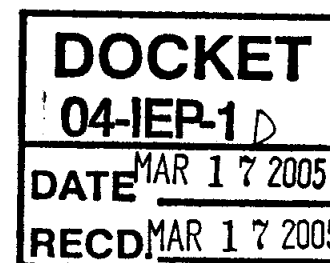
Lisa G. Urlick
Managing Attorney

San Diego Gas & Electric Company
101 Ash Street, 13th Floor
San Diego, CA 92101

Tel: 619-699-5070
Fax: 619-699-5027
lurick@semptra.com

March 17, 2005

Mr. Robert L. Therkelsen (*via Federal Express*)
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5512



RE: Application For Designation Of Confidentiality
APPEAL OF SAN DIEGO GAS & ELECTRIC COMPANY
Electricity Demand Forecast and Pricing Data; Docket No. 04-IEP-1D

Dear Mr. Therkelsen:

San Diego Gas & Electric Company (SDG&E) is in receipt of your letter dated March 3, 2005, denying portions of SDG&E's request for confidential treatment of certain demand forecast data submitted to the California Energy Commission (CEC) on February 1, 2005. Among the forms for which SDG&E requested confidential treatment, you find that the following shall be confidential: Form 1.5 (Peak Demand Weather Scenarios – all columns except "1-in-2 Temp.") and Form 1.6 for the years 2005 to 2016 (Hourly Loads). Your letter states that this data will be kept confidential for three years, and SDG&E appreciates your support for confidentiality of that data. On the other hand, Form 1.3 (LSE Coincident Peak Demand by Sector), Form 1.4 (Distribution Area Peak Demand), Form 1.5 ("1-in-2 Temp."), and Form 2.3 (Electricity Rate Forecast) are deemed public according to your letter. SDG&E has determined that due in part to the passage of time, it will not appeal your finding that Form 2.3 be public. For the reasons discussed in SDG&E's February 1 Application^{1/} and also as addressed in further detail below, however, SDG&E respectfully appeals your conclusion that the data from Forms 1.3, 1.4, and 1.5, shall be deemed public. This conclusion is (1) internally inconsistent and (2) fails to consider the ample legal support to protect this material from disclosure. Your March 3 findings should therefore be revised to protect the data that SDG&E originally requested be confidential in its February 1 filing, except for Form 2.3.

A. Release of the data on Forms 1.3, 1.4, and 1.5 would likely lead to ratepayer harm and/or violate the trade secret privilege.

Addressing specifically the data that is denied confidential treatment in your March 3 letter, you state that the total peak demand in Form 1.3 and the distribution area peak demand in Form 1.4 are deemed public because they are "annual net peak numbers" and

^{1/} Incorporate herein by reference.

they are “insufficient to arrive at hourly net short forecasts” (which you acknowledge is commercially sensitive information). This reasoning is in conflict with your conclusion that Form 1.6, hourly load data, should be protected. In combination with other publicly available data, an analyst could use the information in Forms 1.3, 1.4 and 1.5 to back into the hourly data that is being protected in Form 1.6. In addition, Forms 1.3 and 1.4 provide sufficient detail such that the annual residual net short can be calculated because the other “pieces” of performing that analysis are publicly available. Contrary to the apparent assumption in your letter, the fact that these forms only show annual data does not lead to the inevitable conclusion that the data should not be protected. Because this data is disaggregated and/or provides key links to calculating residual net short or hourly positions, it is both commercially sensitive as a trade secret and should also be protected under the public interest balancing test, both of which are discussed in detail in Sections 2 and 3 of SDG&E’s February 1 Application, as well as below.

Furthermore, although these forms did not include generation data, SDG&E’s generation profile is easily compiled through publicly available information. Therefore, given the load information contained in the February 1 filing, one can “reverse engineer” SDG&E’s residual net short position, even on a monthly and hourly basis. As explained in SDG&E’s Application, the more suppliers understand SDG&E’s energy needs, the more ability they have to adjust prices to their maximum advantage and to the detriment of SDG&E’s ratepayers. SDG&E also believes that the information provided to the CEC is presented in a “user friendly” format that will assist anyone attempting to decipher SDG&E’s energy needs and the information will verify their attempts to replicate SDG&E’s positions. As SDG&E has previously explained, this analysis need not be mathematically exact to cause harm; ratepayers undertake substantial risk of higher prices anytime a seller has a reasonable idea of when a utility must buy or sell gas or electricity.

B. A complete legal analysis under the applicable laws and regulations compels protection of the information at issue in this Appeal.

In addition to the above flaws in the CEC’s factual analysis, the legal analysis is, at best, incomplete. Under the CEC’s own regulations, as well as under California law and determinations by the California Public Utilities Commission (CPUC), this data qualifies for confidential treatment. Public Resources Code Section 2505 describes the information that must be provided to the CEC to receive a confidential designation. Among those provisions, Section 2505(a)(1)(d) requires the Applicant to cite and discuss the Public Records Act or other law(s) that allow the CEC to keep the record confidential. SDG&E made those arguments in Sections 2 and 3 of its February 1 filing. The March 3 letter provides scant, incomplete mention of only some of those authorities and generally alleges a failure to satisfy the trade secret privilege. In fact, all of the data that was rejected for confidential treatment easily fits under the trade secret definition quoted in the March 3 letter: “any formula, pattern, device or compilation of information which is used in one’s business, and which gives [him or her] an opportunity to obtain an advantage over competitors who do not know or use it ...” (see March 3 Letter to

SDG&E, p. 1; quoting *Uribe v. Howie* (1971) 19 Cal. App. 3d 194, 207-208).^{2/} Thus, any conclusion that the data SDG&E seeks to protect in its February 1 filing is not a trade secret must be rejected.

Furthermore, even if the trade secret standard were not satisfied here, the Public Records Act also protects data from disclosure when “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record” (Government Code Section 6255(a)). The March 3 letter does not even mention whether or how this public interest balancing test has or has not been met. SDG&E’s Application, on the other hand, explains in more than sufficient detail why ratepayers – those same ratepayers whose interests the CEC should also protect – may be harmed in the form of higher energy prices if this commercially sensitive data were available to suppliers.

Finally, the CEC makes no mention of Section 454.5 of the Public Utilities Code that requires the CPUC to maintain as confidential market sensitive information related to a distribution utility’s procurement plan. The information at issue in this appeal falls squarely within the scope of this statute, and it should be protected at the CEC as well. Because this year’s IEPR process is essentially being co-managed with the CPUC’s procurement planning process,^{3/} it is incumbent upon the CEC to treat the market sensitive procurement data on the same level as would the CPUC. The CPUC has in fact recently stated that its intervenor compensation rules would apply at CEC’s IEPR process,^{4/} so it is only fair and logical that the CPUC’s requirements for confidentiality also be honored here at the CEC. Moreover, in discussing the obligations imposed under Section 454.5, the CPUC explained in its last resource planning decision the importance of maintaining the protections required under Section 454.5:

Currently under ... Section 454.5 to the Pub. Util. Code, the Commission is to have in place ***procedures that ensure the confidentiality of any market sensitive information submitted by an IOU as part of its proposed procurement plan***, while ORA and other consumer groups that are not market participants (NMP) have access to the information under confidentiality provisions. This provision of ***AB 57 was an attempt to balance the compelling ratepayer interest in ensuring that certain legitimately confidential information is kept out of the hands of those who can use it to manipulate wholesale energy markets***, with promoting a sufficiently transparent decision-making process to allow for scrutiny and review by the legislature and the public.^{5/}

^{2/} The California Public Records Act allows for non-disclosure of trade secrets at Government Code Section 6254(k), which refers to protecting Evidence Code Privileges.

^{3/} The trade secret privilege is memorialized in Evidence Code Section 1060.

^{4/} See Assigned Commissioner Ruling dated September 16, 2004; D.04-12-048, pp. 165-167.

^{5/} See Assigned Commissioner Ruling dated March 14, 2005, pp. 8-12.
D.04-12-048, p. 177.

Mr. Robert L. Therkelsen
March 17, 2005
Page 4 of 4

C. Conclusion.

In short, the CEC's analysis and conclusions regarding SDG&E's February 1 Confidentiality Application fall well short of the CEC's own legal standard that applies to protect this data. Not only should this material be protected under the trade secret privilege and the public interest balancing test of the Public Records Act, it is also market sensitive under Section 454.5 of the Public Utilities Code. SDG&E respectfully urges the Commission to revise the Executive Director's conclusion as expressed in the March 3, 2005 letter to find that the data SDG&E sought to protect as confidential (except Form 2.3) should indeed be treated consistent with SDG&E's limited and narrowly tailored confidentiality request.

Sincerely,

Lisa G. Urick

cc: Fernando de Leon, Esq., California Energy Commission (*via Federal Express*)

LD2D-#161546-v1-THERKELSEN (CEC) LTR - 3.17.05.DOC

Docket Optical System - SDG&E Appeal

From: "Urick, Lisa" <LUrick@Sempra.com>
To: "Fernando De Leon" <fdeleon@energy.state.ca.us>
Date: 3/17/2005 4:58 PM
Subject: SDG&E Appeal
CC: <docket@energy.state.ca.us>

Fernando:

Please find attached SDG&E's appeal of the March 3 Executive Director decision regarding SDG&E's confidentiality request relating to its February 1 electricity demand forecast filing. We are also sending the appeal by Federal Express to you and Mr. Therkelsen. Please feel free to call me at 213-244-2955 if you have any questions.

Thank you very much,
Lisa Urick
Attorney for
SDG&E

<<LD2D-#161546-v1-ROBERT_THERKELSON_LETTER_-_3_17_05.DOC>>